

## MEMORANDUM

TO: Board of Supervisors

FROM: County Counsel

DATE: October 14, 2014

RE: California Groundwater Legislation

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### I. Introduction

On September 16, 2014, Governor Brown signed a three-bill package creating a statewide system for managing groundwater resources that includes Senate Bill 1168 (Pavley), Assembly Bill 1739 (Dickenson) and Senate Bill 1319 (Pavley). Also on September 16, 2014, Governor Brown signed Assembly Bill 2453 (Achadjian) that provides for the establishment of the Paso Robles Basin Water District. The combined length of these bills is approximately seventy five pages and detailed summaries of the statewide bills are available online. Consequently, this memorandum will focus on the local impacts of the legislation.

### II. Statewide Legislation

Most of the statewide legislation is devoted to the creation of the Sustainable Groundwater Management Act (Water Code Section 10720 et seq.) (SGMA). The SGMA applies to all (twenty two) groundwater basins within the County, as identified in Bulletin 118, with the exception (or conditional exception) of the Santa Maria Valley Groundwater Basin and the Los Osos Valley Groundwater Basin, basins which have been (or are in the process of being) adjudicated. Any portion of either basin in which groundwater rights have not been (or are not) determined as part of the adjudication action does not fall within the exemption.

Although the SGMA generally applies to all groundwater basins within the County, it imposes groundwater management requirements only on groundwater basins that the Department of Water Resources (DWR) has designated as high- or medium-priority pursuant to the California Statewide Groundwater Elevation Monitoring (CASGEM) Program. In its 2014 Final Basin Prioritization, DWR categorized five groundwater basins within the County as high- or medium-priority, the Santa Maria Valley Groundwater Basin, the Los Osos Valley Groundwater Basin, the Paso Robles Area Groundwater Basin, the San Luis Obispo Valley Groundwater Basin and the Cuyama Valley Groundwater Basin.

#### a. Governance Requirements and Deadlines

The SGMA permits the State Water Resources Control Board (SWRCB) to designate a high- or medium-priority basin as a “probationary basin” unless one of the following has

occurred on or before June 30, 2017: (a) a local agency has elected to be a groundwater sustainability agency (GSA) that intends to develop a groundwater sustainability plan (GSP) for the entire basin; (b) a collection of local agencies has formed a GSA or prepared agreements to develop one or more GSPs that will collectively serve as a GSP for the entire basin; (c) a local agency has submitted an alternative that has been approved or is pending approval by DWR (e.g. management pursuant to adjudication) (see below regarding consequences of probationary designation).

As multiple local agencies overlie most (if not all) of the high- or medium-priority basins within the County, the local agencies overlying each basin will need to create a single GSA through a joint powers agreement or other legal agreement that will implement a single GSP or enter into an agreement pursuant to which the local agencies will collectively implement one or multiple coordinated GSPs.

If there is an area within a basin not covered by a GSA, the County will be presumed to be the GSA for that area.

The SGMA grants significant powers and authorities to GSAs, including, the power to: (a) require registration of groundwater extraction facilities; (b) impose spacing requirements on new groundwater well construction and reasonable operating regulations on existing groundwater wells to minimize well interference; (c) control groundwater extractions; and (d) impose groundwater extraction charges.

#### b. Sustainable Groundwater Management Plan Requirements and Deadlines

The SGMA permits SWRCB to designate a high- or medium-priority basin as a probationary basin unless one of the following has occurred on or before January 31, 2022: (a) a GSA has adopted a GSP for the entire basin; (b) a collection of local agencies has adopted GSPs that collectively serve as a GSP for the entire basin; (c) DWR has approved an alternative (e.g. management pursuant to adjudication).

For high- or medium-priority basins which DWR determines are “subject to critical conditions of overdraft,” the GSP deadline is shortened, and SWRCB may designate such a basin as a probationary basin unless (a), (b) or (c) has occurred on or before January 31, 2020.

The SGMA identifies a number of items that must be included within a GSP, including measurable objectives, as well as interim milestones in increments of five years, in order to achieve the sustainability goals in the basin within twenty years of implementation of the GSP.

A GSA may adopt or amend a GSP after a public hearing, held at least ninety days after providing notice to a city or county within the area of the proposed plan or amendment. The SGMA requires DWR to review each GSP upon adoption and periodically thereafter to determine whether it is likely to achieve the sustainability goal.

After adoption of a GSP, a GSA must submit annual reports to DWR containing, among other things, groundwater elevation data and annual aggregated data identifying groundwater extraction for the preceding water year.

#### c. Consequences of Probationary Designation

If a basin is designated as a probationary basin or if a GSA has not otherwise been established for a high- or medium-priority basin within the time prescribed, the SGMA imposes annual extraction reporting requirements on all persons within the basin with limited exception. In addition, subject to certain noticing and cure periods, SWRCB may adopt an interim plan for the basin which may include, among other things, restrictions on groundwater extraction and a physical solution.

#### d. Land Use Planning Requirements

The SGMA also imposes certain land-use planning requirements on counties. For example, before adopting or substantially amending its general plan, a county must review and consider any groundwater management plan adopted pursuant to Water Code Section 10750 (commonly known as an AB 3030 Plan), a GSP, an adjudication of water rights or an interim order by SWRCB.

#### e. County Regulation of Groundwater

The SGMA makes clear that the legislative intent in adopting the SGMA is not to preempt the authority of cities and counties to manage groundwater pursuant to their police powers.

### III. Paso Robles Area Groundwater Basin Legislation

Assembly Bill 2453 (AB 2453) permits, on or before January 1, 2019, ten percent of landowners or an affected local agency within the county, including the County and the County Flood Control District, to petition (apply to) the Local Agency Formation Commission (LAFCO) for the formation of the Paso Robles Basin Water District (District). Although AB 2453 sets forth an extensive list of District powers (e.g. regulation of the use and extraction of groundwater), the powers of the District (as well as its boundaries) would be established by LAFCO. For purposes of the petition (in the event of submission by landowners) and for purposes of the formation vote, each voter (who must be a landowner) may cast one vote. For purposes of the election of directors, AB 2453 divides voters into two general classes (landowner and resident) and three landowner subclasses (small, medium and large)

With respect to County and County Flood Control District authority, AB 2453 provides that the creation of the District is not intended to and shall not modify their powers to manage and protect groundwater resources within the County, including within the Paso Robles Area Groundwater Basin.

If the District is formed, it is anticipated that it will be one of the GSAs (or a part of a single GSA) for the Paso Robles Area Groundwater Basin, in combination with other local agencies overlying the basin (e.g. the City of Paso Robles). If the District is not formed, the County will be presumed to be the GSA for all areas overlying the basin and outside of existing local agency boundaries.

#### IV. Conclusion

As five basins within the County have been designated as high- or medium-priority by DWR, some of which may be further designated by DWR as subject to critical conditions of overdraft, the statewide legislation imposes significant new requirements regarding the regulation of groundwater within the County. In order to meet these requirements, coordination among the various local agencies that overlie each affected basin will be critical.